IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Bail Appl..No. 6441 of 2007()

CRIME NO.403/CB/209/2003 OF CBCID, THIRUVANANTHAPURAM

: PETITIONER/3RD ACCUSED:-

S.ANIL KUMAR, AGED 50,
S/O SANKARAN NAIR, TC 23/923(2),
MUNDANAD ROAD, VALIASALA, CHALI,
THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: COMPLAINT;

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM, REPRESENTING INSPECTOR OF
POLICE, CDCID THIRUVANANTHAURAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6441 of 2007

Dated this the 24th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. This is the second application for anticipatory bail filed by the petitioner. An earlier application for anticipatory bail was dismissed by another Bench of this Court as per order dated 29.10.03 in B.A.NO.1673 of 2003.

2. The petitioner faces allegations in a crime registered for offences punishable, inter alia, under Sections 120B and 409 I.P.C. The accused persons are the appraiser/cashier, the manager and senior clerk of a Co-operative Urban Bank. The petitioner is the senior clerk. The crux of the allegations is that 3 accused persons in collusion have created false documents to make it appear that applications for gold loan were made by the members/customers. Without the said customers applying for loan or offering any gold as security, amounts under the gold loan scheme were allegedly shown as released to such persons. The accused persons had allegedly misappropriated such amounts illegally taken away from the coffers of the bank.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to him, though he had

admittedly held charge as manager for 7 days during the span of 11 months during which period, the offence is alleged to have been committed, he had no culpable or contumacious responsibility at all. The 1st accused in the departmental proceedings had admitted his liability. He has admitted that the other accused have no contumacious responsibility. He has, in fact, produced back the gold ornaments which were taken out of the bank by him. In these circumstances, the petitioner may not be subjected to the trauma of undeserved arrest and detention. The petitioner may be granted anticipatory bail, prays the learned counsel for the petitioner.

4. Notice was given to the learned Public Prosecutor . The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the plea of innocence of the accused cannot at all be accepted at this stage. Prudence demands that the culpable role of the petitioner must be inferred from the circumstances available. During the period during which the petitioner was holding charge as manager for 7 days, amounts have been shown as released to customers who had never applied for loans. It is impossible for such a transaction to take place without the culpable involvement and collusion of the petitioner. The theory of inadvertance and negligence of the petitioner cannot at all be accepted. In these circumstances,

the petitioner may not be granted anticipatory bail. He may be directed to resort to the ordinary course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction then seek regular bail in the ordinary course, submits the learned Public Prosecutor .

5. This is the second application for anticipatory bail. To persuade this Court to entertain a second application for anticipatory bail when the rejection of the first application has not been challenged, the petitioner must show change in circumstances. Except that a period of about 4 years have elapsed from the dismissal of the earlier application dated 29.10.03, no other circumstance has been revealed. I am proceeding to consider the application for bail on merits only because of such lapse of a period of 4 years. The lapse of the period of 4 years has not in any way led the investigator to any conclusion or inference in favour of the petitioner. I take note of the specific allegation that during the period during which the petitioner was holding charge of the manager also, loans have been sanctioned on fake applications which the alleged applicants explain that they had not submitted at all.

6. I shall carefully avoid any detailed discussion about the acceptability of the allegations or the credibility of the data collected. I am not at this stage called upon or expected to consider the materials

on golden scales. Suffice it to say that I am persuaded to agree with the learned Public Prosecutor that there are no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

7. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-